

FILED

JAN 13 2025

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SMART PROPERTIES & LOGISTICS LLC )

CASE NO.:

**1:25 CV 00056**

v.

JUDGE:

**JUDGE CALABRESE**

**MAG. JUDGE SHEPERD**

**NOTICE OF REMOVAL**

DWAYNE LEVY )

Removed From:

Garfield Heights Municipal Court,

Cuyahoga County, OH, Case No. CVG2472738

**DWAYNE LEVY'S NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE THAT** Dwayne Levy hereby removes this case from the Garfield Municipal Court to the United States District Court for the Northern District of Ohio Eastern Division. Copies of this notice will be served on the Plaintiff at the address listed in Plaintiff's complaint and a Notice Of Filing of Notice Of Removal will be filed in the Garfield Municipal Court. A copy of Plaintiff's summons and complaint in this action is attached to this notice and constitutes all process, pleadings, and orders served upon Dwayne Levy in this action.

**INTRODUCTION**

1. On December 19, 2024, Smart Properties & Logistics, LLC(hereinafter "Plaintiff") filed a Complaint ("Complaint") in the Garfield Heights Municipal Court in Cuyahoga County, Ohio(hereinafter "State Court") styled as *Smart Properties & Logistics v. Dwayne Levy*, Case Number CVG2472738 (hereinafter "State Court Action").

2. The State Court Action concerns a contract dispute between Plaintiff and Dwayne Levy involving a lease agreement for rental property(hereinafter “Premises”).
3. Plaintiff alleges it is the registered owner & Sean Martin is property manager.
4. Plaintiff alleges unlawful detainer and nonpayment of rent against Dwayne Levy.
5. Plaintiff alleges it duly served Dwayne Levy with a notice to leave the Premises.
6. Plaintiff asserts that its Complaint is supported by the attached Exhibits.
7. Plaintiff prays for a judgement finding that Dwayne Levy has breached the lease and unlawfully detains the Premises from Plaintiff and that an order of restitution and possession of said premises be issued in favour of Plaintiff and such further relief as law or equity.
8. Dwayne Levy filed an Answer and Counterclaim alleging breach of contract.
9. Dwayne Levy alleges that there is an agreement in place that binds the parties.
10. Dwayne Levy alleges that Plaintiff is in breach of the agreement through non-performance.
11. Dwayne Levy further alleges that through October 2024 he fully performed on the contract.
12. Dwayne Levy alleges that Plaintiff permitted another tenant in the Premises to actively breach the agreement and did not perform according its terms to remedy the breaches.
13. In November 2024, Plaintiff made an offer to accept partial rent and then subsequently refused the rent when paid.
14. Dwayne Levy alleges Plaintiff’s non-performance to the terms and conditions of the lease agreement is causing harm and damage to Dwayne Levy, his children and their belongings.

15. Dwayne Levy seeks *“judgement for: money damages against Plaintiff in the amount of \$79,500, relief in the form of a judgement finding that Plaintiff has breached the lease, a judgement finding that Dwayne Levy does not unlawfully detain said premises from Plaintiff, a judgement finding that Plaintiff is in default for non-performance, a judgement finding that Dwayne Levy’s right to possession has not ended, together with such other and further relief as the court may deem equitable, reasonable and just under the circumstances.”*
16. Dwayne Levy is requesting a modification of any orders that he may not be aware of that may have arisen from the pending State Court Action.
17. Plaintiff’s allegations are denied, and it is further denied that Plaintiff is properly named as a party in the State Court Action, with the exception of those facts necessary for removal of this action on the basis discussed herein.
18. A completed Civil Cover Sheet is attached hereto as Exhibit 1. A Notice Of Filing of Notice Of Removal is attached as Exhibit 2. All documents filed in the State Court Action are attached.

### **BASIS FOR REMOVAL**

#### **I. Removal is proper because this Court has subject matter jurisdiction pursuant to 28 U.S. Code § 1331**

19. Pursuant to 28 U.S.C. § 1331, this Court has jurisdiction over this action because the district courts have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States. Therefore, this action could have originally been filed in this Court and is now properly removed to this Court.

**II. Removal is proper because this Court has subject matter jurisdiction pursuant to 28 U.S. Code § 1441(a)**

20. Pursuant to 28 U.S.C. § 1441(a), this Court has original jurisdiction over any civil action brought in the Garfield Municipal Court. Any civil action brought in the Garfield Municipal Court can be removed by the named defendant in that pending civil action to the federal district court and division embracing Garfield Heights, OH. Therefore, this action could have originally been filed in this Court and is now properly removed to this Court.
21. This action is being removed *“to the district court of the United States for the district and division embracing the place where such action is pending,”* pursuant to 28 U.S.C. § 1441(a). The United States District Court for the Northern District of Ohio, Eastern Division embraces Cuyahoga County, Ohio.
22. Plaintiff and Dwayne Levy are subject to personal jurisdiction in Ohio.
23. No previous application has been made for the removal requested herein.

**III. Dwayne Levy Has Satisfied the Procedural Requirements for Removal.**

24. Plaintiff filed the Complaint in the Garfield Municipal Court, Cuyahoga County Ohio on December 19, 2024 as far as Dwayne Levy is aware. Dwayne Levy received the complete filing on or about January 10, 2025. Accordingly, this Notice of Removal is timely filed. (*See 28 U.S.C. § 1446(b)(1) - “The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based”*).

**Preservation of Rights and Defenses**

25. All rights are reserved, including, but not limited to, defenses and objections as to venue and personal jurisdiction and the right to move for dismissal of the Complaint for, e.g., failure to state a claim for relief and failure to include the appropriate parties. The filing of this Notice of Removal is subject to, and without waiver of, any such defenses and objections.

Dwayne Levy also reserves the right to amend or supplement this Notice of Removal.

**WHEREFORE**, Dwayne Levy respectfully gives notice that the above-captioned civil action pending in the Garfield Municipal Court, Cuyahoga County, Ohio is removed to this Court, pursuant to 28 U.S.C. §1331 and §1441(a).

Dated: Garfield, Ohio January 13, 2025

By:   
Dwayne Levy  
[dwaynesbills@yahoo.com](mailto:dwaynesbills@yahoo.com)  
Tel. (216) 577-1334

**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2025, the foregoing Notice of Removal, and all exhibits thereto, were filed with this Court and that stamped copies of same were served upon the Plaintiff via certified mail number 9589071052701009576401, and a Notice Of Filing of Notice Of Removal was filed in person in the Garfield Heights Municipal Court.

Dated: Garfield Heights, Ohio January 13, 2025

By:   
Dwayne Levy  
[dwaynesbills@yahoo.com](mailto:dwaynesbills@yahoo.com)  
Tel. (216) 577-1334